

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CAPRICE ASSING as mother and natural  
guardian of infant R.A.,

Plaintiff,

-against-

Police Officer JONATHAN ARIAS, Shield No.  
329; Police Officers JOHN and JANE DOE 1  
through 10, individually and in their official  
capacities (the names John and Jane Doe being  
fictitious, as the true names are presently  
unknown),

Defendants.  
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**FIRST AMENDED  
COMPLAINT**

Jury Trial Demanded

12 CV 5839 (WFK) (JMA)

**NATURE OF THE ACTION**

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

**JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

### **JURY DEMAND**

5. Plaintiff demands a trial by jury in this action.

### **PARTIES**

6. Plaintiff R.A. is a resident of Kings County in the City and State of New York.

7. Defendant Police Officer Jonathan Arias, Shield No. 329 (“Arias”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Arias is sued in his individual and official capacities.

8. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

9. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of defendant City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

10. At all times relevant herein, all individual defendants were acting under color of state law.

### **STATEMENT OF FACTS**

11. At approximately 10:00 p.m. on July 31, 2012, plaintiff and another

individual were lawfully backseat passengers in a for-hire vehicle in the vicinity of Humboldt Street and Seigel Street in Brooklyn, New York.

12. Defendants pulled the vehicle over.

13. Defendants searched the vehicle including the trunk.

14. Without probable cause or reasonable suspicion to believe he had committed any crime or offense, defendants removed plaintiff from the vehicle, searched, handcuffed and arrested him.

15. Plaintiff was taken to the 90<sup>th</sup> Precinct where he was unlawfully strip-searched, fingerprinted and processed.

16. At the precinct the officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff in possession of marijuana.

17. At no point did the officers observe plaintiff in possession of marijuana.

18. Plaintiff was eventually taken to Brooklyn Central Booking.

19. Plaintiff was forced to sleep on the filthy cell floor overnight.

20. On or about August 1, 2012, plaintiff was released from Brooklyn Central Booking without ever appearing before a judge.

21. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, anxiety, embarrassment, humiliation, and damage to his reputation.

**FIRST CLAIM**  
**Unlawful Stop and Search**

22. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

23. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

24. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**SECOND CLAIM**  
**False Arrest**

25. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

26. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

27. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**THIRD CLAIM**  
**Denial Of Constitutional Right To Fair Trial**

28. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

29. The individual defendants created false evidence against plaintiff.

30. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

31. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

32. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**FOURTH CLAIM**  
**Unlawful Strip Search**

33. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

34. The defendants violated the Fourth and Fourteenth Amendments because they unlawfully subjected plaintiff to a strip search without legal justification.

35. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged

**FIFTH CLAIM**  
**Failure To Intervene**

36. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

37. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

38. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth And Fourteenth Amendments.

39. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: December 21, 2012  
New York, New York

HARVIS WRIGHT  
SALEEM & FETT LLP

A handwritten signature in black ink, appearing to read 'Gabriel Harvis', is written over a horizontal line.

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